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"Spot Zoning"—A Spot That Could Be Removed from the Law

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"SPOT ZONING" — A SPOT THAT COULD BE REMOVED FROM THE LAW

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I. DEFINITIONS OF "SPOT ZONING"

"Spot zoning" is common legal terminology that describes a zoning provision which restricts only the use of a particular piece of property or a small group of adjoining properties, but which does not relate to the general plan of the community.[1] This terminology is often applied to changes or proposed changes in the original zoning of property. Courts have called spot zoning "[a]n attempt to wrench a single small lot from its environment and give it a new rating that disturbs the tenor of the neighborhood."[2] But this charge of discrimination can be raised to the

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1. Guerriero v. Galasso, 136 A.2d 497, 500 (Conn. 1957); *see* Michael D. Schrunk, Comment, 46 OR. L. REV. 323, § 24-25 (1967).

2. Linden Methodist Episcopal Church v. City of Linden, 173 A. 593, 595 (N.J. 1934) (holding that such attempts "should receive close scrutiny of the courts lest the zoning enactments, constitutional and legislative, be diverted from their true purpose"); *see also* City of Pharr v. Tippitt, 616 S.W.2d 173, 177 (Tex. 1981) (discussing various grounds for invalidating amendments to zoning ordinances); Higbee v. Chicago, Burlington & Quincy R.R., 292 N.W. 320, 322-23 (Wis. 1940) (indicating that "spot zoning" is a term ordinarily applied to amendments to zoning laws). *See generally* Robert C. Bledsoe, Note, 33 TEX. L. REV. 763 (1955) (listing several factors courts use to determine the validity of spot zoning); Harold W. Young, Note, 29 TEX. L. REV. 689 (1951) ("[S]pot zoning in the last

original classification of the property as well as to any reclassification. Singling out a small area for different treatment from that accorded the surrounding properties without justification is invalid.[3]

Spot zoning has been referred to as the antithesis of planned zoning.[4] Spot zoning undermines comprehensive planning because it is out of harmony with the overall zoning of the community.[5] It smacks of special benefit for a limited group of property owners.[6] Consequently, courts strike down spot zoning.[7] As a test for spot zoning, courts ask whether the zoning (1) is inconsistent with the community's comprehensive plan,[8] and (2) benefits the owner of the land over the general public.[9]

Courts prohibit as spot zoning, zoning of a small area[10] and incongruous uses between that small area and adjacent tracts.[11] For

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analysis is special interest legislation."). On zoning amendments, *see generally* Bruce W. McClendon, *Evaluating Rezoning Requests*, 1984 INST. ON PLAN., ZONING & EMINENT DOMAIN 151 (1984). *See also* Mike McKool, Jr., *Preparing and Presenting a Rezoning Application*, 1984 INST. ON PLAN., ZONING & EMINENT DOMAIN 217 (1984).

3. *See* Reynolds v. Barrett, 83 P.2d 29 (Cal. 1938) (invalidating original, monopolistic zoning because residentially zoned "island" was completely surrounded by non-residential property); N.T. Hegeman Co. v. Mayor of River Edge, 69 A.2d 767, 771 (N.J. Super. Ct. Law Div. 1949) (invalidating original zoning as not uniform within district); *cf.* Blades v. City of Raleigh, 187 S.E.2d 35, 45 (N.C. 1972) (describing "spot zoning" as involving either an original ordinance or amendment).

4. Palisades Properties, Inc. v. Brunetti, 207 A.2d 522, 533 (N.J. 1965).

5. Reskin v. City of Northlake, 204 N.E.2d 600, 603 (Ill. App. Ct. 1965).

6. *See* Twenty-One White Plains Corp. v. Village of Hastings-on-Hudson, 180 N.Y.S.2d 13, 16-19 (N.Y. Sup. Ct. 1958) (describing grounds for overturning spot zoning, but upholding the ordinance because the plaintiffs failed to prove that it was arbitrary or capricious), *aff'd*, 196 N.Y.S.2d 562 (N.Y. App. Div. 1959).

7. Courts, however, are very inconsistent in their treatment of spot zoning. *See* Lee v. District of Columbia Zoning Comm'n, 411 A.2d 635 (D.C. 1980) (citing 1 ANDREW H. RATHKOPF, THE LAW OF ZONING AND PLANNING § 26.02 (1978)).

8. *Id.* at 641 (citing 1 ROBERT M. ANDERSON, AMERICAN LAW OF ZONING § 5.04, 204 (1968)).

9. *See* Wallington Home Owners Ass'n v. Borough of Wallington, 327 A.2d 669, 671 (N.J. Super. Ct. App. 1974); Rodgers v. Village of Tarrytown, 96 N.E.2d 731 (N.Y. 1951).

10. *See* Reskin v. City of Northlake, 204 N.E.2d 600, 603 (1965) (noting that a change of zone applied only to a small area is a prerequisite for spot zoning). On the "smallness" factor, see *infra* notes 80-88 and accompanying text.

11. *See* SHEPARD'S ORDINANCE LAW ANNOTATIONS § 29, at 35-41 (1969) (listing factors "determining whether a reasonable basis exists for spot zoning").

example, one lot in a business district may be limited to residential uses, thereby creating an island within the sea of commerce.[12] In contrast, the spot may be a single industrial lot within a wholly residential area.[13] The common feature is variant, and often favorable, treatment of the spot.

Courts sometimes distinguish "reverse spot zoning" from spot zoning. While "spot zoning" usually refers to more favorable treatment of a small area, "spot zoning in reverse" describes more restrictive zoning of a particular lot.[14] A Florida court[15] invalidated the restrictive zoning of property as arbitrary "spot zoning in reverse" when a landowner complained because the zoning plan allowed apartment buildings on surrounding properties but not his.[16] Because spot zoning describes variant treatment, however, it covers both situations in which a locality treats a particular lot more generously than surrounding properties and situations in which a locality treats a lot more restrictively.[17]

Courts often distinguish spot zoning from "partial" or "piecemeal" zoning. The former term indicates zoning that people attack as out-of-line with a community's comprehensive plan, while the latter terms describe single zoning regulations applied to a portion of a community that lacks any overall zoning or plan.[18] Most often, courts uphold piecemeal zoning on the ground that a local government is not obligated to zone all its territory at one time, but may, in its legislative wisdom,

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12. Wilkins v. City of San Bernardino, 175 P.2d 542, 548 (Cal. 1946); Viso v. State, 92 Cal. App.3d 15, 22 (Cal. Ct. App. 1979); Reynolds v. Barrett, 83 P.2d 28, 33 (Cal. 1988).

13. *See* Godfrey v. Union County Bd. of Comm'rs, 300 S.E.2d 273, 275 (N.C. Ct. App. 1983) (holding rezoning of property to "heavy industrial" in order to accommodate plans to relocate grain bin operation "spot zoning").

14. *See* ROBERT S. ELLICKSON & A. DAN TARLOCK, CASES & MATERIALS ON LAND-USE CONTROLS 103 (1981).

15. City of Miami v. Schutte, 262 So.2d 14 (Fla. Dist. Ct. App. 1972).

16. *Id.* at 17; *see also* Galanes v. Town of Brattleboro, 388 A.2d 406, 410 (Vt. 1978) (concluding that trial court may have thought that rezoning amounted to "reverse spot zoning" for benefit of individual landowner, but factual findings did not support this finding).

17. *See supra* notes 4-5 and accompanying text.

18. *See* Annotation, *Validity of Zoning Law as Affected by Limitation of Area Zoned (Partial or "Piecemeal" Zoning)*, 165 A.L.R. 823 (1946).

zone on a gradual basis.[19]

Courts normally apply the term "spot zoning" to legislation, either original enactments or amendments, but not to such administrative forms of special relief as variances.[20] Yet, in some instances, a variance, if contrary to the general plan and welfare of the community, might be a form of spot zoning.[21] Such zoning, after all, lifts out[22] or selects[23] a specific lot or area for different treatment.[24]

States differ as to whether the finding of spot zoning renders the zoning invalid. The Connecticut courts have flatly declared that spot zoning is not permitted[25] while the Pennsylvania courts have declared

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19. *See* State *ex rel.* Henry v. City of Miami, 158 So. 82, 83 (Fla. 1934) (noting that when an enabling act clearly intends a comprehensive plan, piecemeal zoning must fail, but if the act does not mandate such a plan, zoning may be done in small portions); Anne Arundel County v. Ward, 46 A.2d 684, 688 (Md. 1946) ("We think there is no constitutional requirement that an entire municipality . . . be zoned at one time. . . ."); *cf.* Mayor of Wilmington v. Turk, 129 A. 512, 521 (Del. 1925) (finding no difference between comprehensive and partial zoning with respect to permissible scope of zoning regulations); Davidson County v. Rogers, 198 S.W.2d 812, 816 (Tenn. 1947) (partial zoning of county specifically authorized by enabling act).

An Alabama court, however, declared piecemeal ordinances disfavored and therefore held void a single ordinance zoning a small part of the city as residential, with no comprehensive plan to support it and no zoning enactments regarding the rest of the city. Chapman v. City of Troy, 4 So.2d 1, 3 (Ala. 1941).

20. *See* Wilcox v. City of Pittsburgh, 121 F.2d 835, 837 (3d Cir. 1941) (distinguishing amendments, which may support charges of spot zoning, from variances, which avoid a "gradual return to original chaos" and thus escape the charge of spot zoning). *See generally* Lloyd R. Wheeler, Note, 16 CORNELL L.Q. 579, 580 (1931).

21. *See* Schmidt v. Board of Adjustment, 88 A.2d 607, 615 (N.J. 1952) (recognizing that special administrative relief, such as an exception or variance, might be considered spot zoning, but only if the relief was designed to advance purely private interests, not the general welfare).

22. Birdsey v. Wesleyan College, 87 S.E.2d 378, 385 (Ga. 1955) (stating that "spot zoning" involves "lifting out" a particular piece of property from a zoned area).

23. Parker v. Rash, 236 S.W.2d 687, 689 (Ky. 1951) (noting that "spot zoning" is the selection of one lot for classification different from that accorded the surrounding property).

24. *See* M.O. Regensteiner, Annotation, *Spot Zoning*, 51 A.L.R.2d 263, 267-72 (1957) (giving numerous judicial definitions of "spot zoning").

25. Eden v. Town Plan & Zoning Comm'n, 89 A.2d 746, 747 (Conn. 1952) ("Spot zoning, so-called, is not permitted.") (citing Kuehne v. Town Council, 72 A.2d 474, 478 (1950)).

it unconstitutional.[26] Courts in New Jersey[27] and Texas[28] have indicated that if they find a land-use control to be spot zoning, it is automatically void. An Ohio court,[29] though recognizing considerable support for invalidating all spot zoning, summarized the rule on spot zoning: "While spot-zoning is invalid as a general proposition, its invalidity, when found, must be based on all the facts of the situation and on a clear violation of established rights of others."[30]

The majority view is that spot zoning is not necessarily invalid[31] but that it should raise a "red flag" in the judicial mind.[32] Courts should closely scrutinize possible spot zoning with the ultimate determination of validity or invalidity depending on the facts of the particular case.[33] Under this view, the "spot zoning" terminology

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26. Cleaver v. Board of Adjustment, 200 A.2d 408, 414 (Pa. 1964); French v. Zoning Bd. of Adjustment, 184 A.2d 791, 792 (Pa. 1962); *cf.* Bartram v. Zoning Comm'n, 68 A.2d 308, 310-11 (Conn. 1949) (holding zoning which gives a small area special privileges is in general against sound public policy).

27. *See* Borough of Cresskill v. Borough of Dumont, 104 A.2d 441, 448 (N.J. 1954) (invalidating an amendment which in effect granted a variance as "spot zoning"); *cf.* Guaclides v. Borough of Englewood Cliffs, 78 A.2d 435, 439 (N.J. Super. Ct. App. Div. 1951); Seiber v. Laawe, 109 A.2d 470, 477 (N.J. Super. Ct. Law Div. 1954). Both courts indicate that they would hold spot zoning invalid but did not find it in those particular cases because similarly situated property was treated alike.

28. City of Rusk v. Cox, 665 S.W.2d 233, 235 (Tex. Ct. App. 1984); *cf.* Harmon v. City of Dallas, 229 S.W.2d 825, 828 (Tex. Civ. App. 1950) (noting that spot zoning is "ordinarily condemned").

29. Partain v. City of Brooklyn, 138 N.E.2d 180 (Ohio Ct. C.P. 1955), *aff'd,* 133 N.E.2d 616 (Ohio Ct. App. 1956).

30. 138 N.E. at 188. For other cases which indicate that spot zoning is ordinarily invalid but must be judged according to the particular circumstances, see *Page v. City of Portland,* 165 P.2d 280, 284-85 (Or. 1946) ("We do not wish to be understood as announcing a hard and fast rule that 'spot zoning' is illegal. Obviously, the decision in each case depends on its own particular facts."); *State ex rel. Miller v. Cain,* 242 P.2d 505, 510 (Wash. 1952) (finding that spot zoning is "almost universally condemned").

31. *See* Annotation, *Spot Zoning, supra* note 24, at 272 (stating that while it is often said that "spot zoning" is "ordinarily invalid, almost every case in this annotation supports the proposition that such [zoning] is not necessarily invalid"). *See generally* OSBORNE M. REYNOLDS, HANDBOOK OF LOCAL GOVERNMENT LAW 366-67 (1982).

32. *See* Penning v. Owens, 65 N.W.2d 831, 836 (Mich. 1954) (noting that a zoning amendment which creates a small zone of inconsistent use is commonly called "spot zoning" and a court should closely scrutinized this type of zoning).

33. *See* State *ex rel.* Christopher v. Matthews, 240 S.W.2d 934 (Mo. 1951) (emphasizing the importance of the particular facts); *accord* City of Waxahachie v. Watkins, 275 S.W.2d 477 (Tex. 1955); Kenny v. Kelly, 254 S.W.2d 535 (Tex. Civ. App. 1953).

becomes merely descriptive, not an expression of a legal conclusion.[34] This view recognizes that courts should rule spot zoning invalid if it is out-of-line with the general plan for the community,[35] or if it is intended only for the benefit or detriment of an individual property owner and not for the welfare of the general public.[36]

Several courts recognize the descriptive nature of the term "spot zoning." As a general rule, in Washington, "'spot zoning' is invalid when it is primarily for the private interest of the owner of the property affected, and not related to the general plan for the community as a whole."[37] Similarly, an Iowa court[38] held that not all spot zoning violates the law but that courts disfavor it because it raises the possibility that the zoning treats one property owner more favorably than his neighbors without good reason. If a court finds such unjustified favoritism, it will invalidate the zoning due to its discriminatory nature.[39] Thus, even if a court finds spot zoning, the validity of the zoning depends on the further determination of whether or not reasonable grounds exist for treating the particular parcel of land differently from nearby areas.[40]

Following these decisions, this Article proposes that courts abandon spot zoning terminology and instead focus on the underlying reasons for invalidating zoning: lack of a relationship to a valid police-power purpose, inconsistency with the community plan, or unreasonable discrimination between parcels of land. First, this Article surveys spot zoning cases to demonstrate that courts invalidate zoning for the three reasons just stated, and not simply because it is "spot zoning." Second, this Article demonstrates that the term "spot zoning" is no longer a

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34. *See* Bucholz v. City of Omaha, 120 N.W.2d 270, 275 (Neb. 1963) ("Spot zoning is a descriptive term rather than a legal term. Spot zoning as such is not necessarily invalid. . . .").

35. *See* Guerriero v. Galasso, 136 A.2d 497, 501 (Conn. 1957).

36. *Cf. In re* Mulac, 210 A.2d 275 (Pa. 1965).

37. Anderson v. City of Seattle, 390 P.2d 994, 995 (Wash. 1964) (considering city zoning ordinance that rezoned certain properties from multiple residence low density zones to multiple residence high density zones).

38. Hermann v. City of Des Moines, 97 N.W.2d 893, 895 (Iowa 1959).

39. *See In re* Appeal of Lieb, 116 A.2d 860 (Pa. Super. Ct. 1955) (noting that "unreasonable discrimination" constitutes grounds for invalidating a zoning ordinance).

40. *See* Perkins v. Marion County, 448 P.2d 374, 377 (Or. 1968) (holding that in such instances, "[t]here must be a reasonable ground or basis for the discrimination. . .").

useful legal term. Finally, this Article argues that courts should abandon the term "spot zoning" in favor of general principles of zoning law.

II. GROUNDS FOR INVALIDATING "SPOT ZONING"

Challenges to spot zoning fall into three categories: those that challenge the zoning because it is not related to a valid police-power purpose; those that challenge the zoning because it does not comply with the general plan of the community; and those that charge the zoning with discrimination. This Part discusses cases involving each of these claims.

In order to be a valid exercise of the police power, zoning must reasonably connect to a police power purpose: protection of public safety, health, morality, or the general welfare.[41] Because a citizen has a constitutional right to use his real property as he wishes so long as he harms no one else, the police power cannot abridge a particular use of property unless that use endangers or threatens public safety, health, or comfort, or the general welfare.[42] The police power belongs to state governments, which may delegate their authority to local governments — the entities that engage in the bulk of zoning activities.[43]

Once a locality enacts a zoning ordinance, the ordinance enjoys a presumption of validity that can be overcome only by clear and cogent evidence that the zoning ordinance does not reasonably further a police power purpose or is otherwise outside local authority.[44] If the challenging party shows that the locality enacted the zoning primarily for the benefit of private persons and that it does not bear a substantial relationship to the public welfare, the challenger has met his burden and the court will invalidate the zoning.[45]

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41. *See* Partain v. City of Brooklyn, 138 N.E.2d 180 (Ohio Ct. C.P. 1955) (rezoning of property from residential to industrial use found related to public health, morals, safety, and general welfare and therefore not spot zoning). *See generally* REYNOLDS, *supra* note 31, at 357 n.6 (citing cases holding that "[z]oning can be constitutional if it is reasonable and bears a reasonable relationship to community health, safety, morality, or general welfare").

42. Spann v. City of Dallas, 235 S.W. 513, 515 (Tex. 1921).

43. Clements v. McCabe, 177 N.W. 722, 725 (Mich. 1920).

44. Burkett v. City of Texarkana, 500 S.W.2d 242, 245 (Tex. Civ. App. 1973).

45. *See* Anderson v. Island County, 501 P.2d 594, 598 (Wash. 1972) (finding that a rezoning of property from residential to commercial in order to allow continued operation of a cement batching plant was arbitrary and capricious and thus invalid as spot zoning). *But see* Freeburg v. City of Seattle, 859 P.2d 610, 612 (Wash. Ct. App. 1993) (holding that the arbitrary and capricious standard was superseded by a statutory substantial

Many spot zoning cases deal with the question of whether the zoning enhances the general welfare or otherwise serves a legitimate police power objective. The validity of alleged spot zoning often depends on whether a court finds that the zoning contributes to the general welfare of the community — that all-important, "catch-all" portion of the police power. In determining whether the law has a reasonable connection to the general welfare, the court must consider the nature, size, and character of the property in question and of the surrounding neighborhood and district.[46] A Pennsylvania court[47] invalidated an ordinance that permitted only nine uses on a parcel of property, none of which included the desired use of the parcel for a gasoline station. The court found that restriction not only diminished the value of the particular land but also was contrary to the general welfare of the largely commercial surrounding area.[48] Courts will also invalidate zoning that benefits the land for the private gain of the owner, and not the welfare of the community.[49] For example, if an owner of a single lot desires to use it for an apartment building, which would increase the value of that lot but would also obstruct the view and depreciate the value of many nearby properties, a court will likely invalidate a zoning amendment designed to allow the erection of the apartment building.[50]

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evidence test).

Zoning may, of course, be valid even though it greatly benefits certain private property, so long as it also contributes to the general welfare. *See* McQuail v. Shell Oil Co., 183 A.2d 572, 579-80 (Del. 1962) (holding zoning change to permit heavy manufacturing on petroleum company's land not objectionable as spot zoning, even though the company, as well as the general public, might benefit from the change).

46. *See* Cleaver v. Board of Adjustment, 200 A.2d 408, 413 (Pa. 1964).

47. *In re* Appeal of Glorioso, 196 A.2d 668 (Pa. 1964).

48. *Id.* at 670-71. The court found no relevant factors to differentiate between the "island" and the surrounding districts. *Id.* at 672.

49. *See* Chrobuck v. Snohomish County, 480 P.2d 489, 490-92 (Wash. 1971) (invalidating as spot zoning the reclassification of a 635-acre area within a rural and residential zone for heavy industrial use, to allow construction of an oil refinery).

50. *See* Anderson v. City of Seattle, 390 P.2d 994, 996 (Wash. 1964) (finding spot zoning because expensive homes directly across the street from the development would have depreciated approximately 20% in value); *cf.* Hermann v. City of Des Moines, 97 N.W.2d 893, 896-98 (Iowa 1959) (rezoning part of lot by removing it from zone restricted to one- and two-family dwellings and placing it in multiple residence zone invalidated as spot zoning).

Courts have held that preserving the residential character of a neighborhood by preventing the expansion of commercial uses contributes to the general welfare of a community, and that zoning designed to achieve this purpose, even when applicable to only a small area, survives the charge of spot zoning.[51] Courts have similarly upheld the creation of a buffer between commercial and single-family residential areas based on its contribution to the general welfare of the community.[52] The same is true when zoning broadens the industrial base of a region and produces savings of time and energy for workers in local industry.[53] Courts also find alleviating parking problems in congested areas, such as a downtown, as a legitimate police power purpose when it contributes to the general welfare.[54] But a zoning law designed merely to allow a parking area for one particular business is much more likely to be invalidated as spot zoning.[55]

Satisfying the need for more housing in a particular region is a sufficient contribution to the general welfare to overcome spot zoning arguments.[56] This may occur when a locality zones additional land in

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51. Galanes v. Town of Brattleboro, 388 A.2d 406, 408-10 (Vt. 1978) (holding that a reclassification that narrowed the permissible uses of a 200-foot by 1,000-foot strip that was an "island" in an otherwise residential area was not spot zoning). *See generally* Annotation, *Zoning: Creation by Statute or Ordinance of Restricted Residence Districts from Which Business Buildings or Multiple Residences Are Excluded*, 117 A.L.R. 1117 (1938) (collecting and analyzing state case law pertaining to residential zoning restrictions); Daniel E. Feld, Annotation, *Supreme Court's Views as to Constitutionality of Residential Zoning Restrictions*, 52 L. Ed. 2d 863 (1978) (collecting and analyzing Supreme Court cases pertaining to residential zoning restrictions).

52. *See* Evanston Best & Co. v. Goodman, 16 N.E.2d 131, 132 (Ill. 1938) (upholding two vacant lots assigned to a multifamily district in order to create buffer between commercial and single-family areas). *But see* Schiffer v. Village of Wilmette, 245 N.E.2d 143, 148 (Ill. App. Ct. 1969) (holding land unsuited for a multifamily buffer zone because it took on character of a nearby commercial area and allowing the landowner to build a service station).

53. *See* Save Our Rural Env't v. Snohomish County, 662 P.2d 816, 820-21 (Wash. 1983) (upholding business park zoning classification against a charge that it constituted spot zoning).

54. *See In re* Appeal of Lieb, 116 A.2d 860, 866 (Pa. Super. Ct. 1955).

55. *See* Blumberg v. City of Yonkers, 251 N.Y.S.2d 750, 751 (N.Y. App. Div. 1964) (holding invalid as spot zoning an ordinance changing zoning classification of lots for sole purpose of permitting the property to be used as a supermarket parking lot), *aff'd*, 202 N.E.2d 906 (N.Y. 1964).

56. *See* Lee v. D.C. Zoning Comm'n, 411 A.2d 635, 642 (D.C. 1980) (holding that an amendment to allow rowhouse dwellings promoted a substantial public purpose and was

a residential district for apartment use.[57] However, courts must also consider the harmful effects of allowing additional housing, particularly additional apartment and other multiunit housing. A court may well conclude that a zoning amendment allowing more housing does not advance the general welfare because on balance, the noise, congestion, and other disturbances such housing creates outweigh the benefits it provides.[58]

The public need for a particular use is central in many cases. For example, a court held it outside the police power to exclude an orphanage from a residential district,[59] but within the police power to rezone property to allow a gasoline station.[60] Courts apply the general zoning rule to decide if aesthetic reasons can support spot zoning.[61]

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not spot zoning).

57. *See* Schadlick v. City of Concord, 234 A.2d 523, 526-27 (N.H. 1967) (holding that an amendment changing 60 acres to an apartment-house district from part single residential, part general residence, and part agricultural did not constitute spot zoning). *See generally* Steve Dobkin, et al., *Zoning for the General Welfare: A Constitutional Weapon for Lower-Income Tenants*, 13 N.Y.U. REV. L. & SOC. CHANGE 911 (1984-85) (discussing the use of zoning to alleviate shortages of lower-income housing in New York).

58. *See* Weaver v. Ham, 232 S.W.2d 704, 708-09 (Tex. 1950) (holding that a change from single-family residence zoning to apartment-house zoning did not bear any substantial relation to public health, morals, or general welfare and was thus unjustifiable spot zoning); *supra* note 50 and accompanying text (discussing cases in which residential zoning violated the general welfare).

59. Village of Univ. Heights v. Cleveland Jewish Orphans' Home, 20 F.2d 743, 746 (6th Cir. 1927) (holding that a city's police power does not extend far enough to allow exclusion of an orphanage from a residential zone merely because the children in the orphanage are all of the same religious belief or nationality, or may attend a single school), *cert. denied*, 275 U.S. 569 (1927).

60. *See* Penn v. Metropolitan Plan Comm'n, 228 N.E.2d 25, 35 (Ind. App. 1967) (rezoning reasonable though applied only to a single piece of property). The *Penn* court relied on *Ellicott v. Mayor of Baltimore*, 23 A.2d 649 (Md. 1942), which held that a city's decision that a gasoline station was needed at particular point to meet the demands of steadily increasing traffic was not arbitrary or capricious.

61. *See* J.F. Ghent, Annotation, *Aesthetic Objectives or Considerations as Affecting Validity of Zoning Ordinance*, 21 A.L.R.3d 1222 (1968). *See generally* William H. Agnor, *Beauty Begins a Comeback: Aesthetic Considerations in Zoning*, 11 J. PUB. L. 260 (1962) (looking at aesthetics as a justification for enacting zoning laws); J. Dukeminier, Jr., *Zoning for Aesthetic Objectives: A Reappraisal*, 20 LAW & CONTEMP. PROB. 218 (1955) (advocating aesthetic control as necessary to rational land-use planning); Frank Michelman, *Toward a Practical Standard for Aesthetic Regulation*, PRAC. LAW Feb. 1969, at 36 (clarifying the basic issues in the controversy of aesthetic based zoning); Stephen F. Williams, *Subjectivity, Expression, and Privacy: Problems of Aesthetic Regulation*, 62

The traditional rule holds that aesthetics alone will not suffice, but there is a strong trend to the contrary.[62]

Despite varied facts, many cases of supposed spot zoning boil down to a simple question: whether the particular regulation was reasonably designed to achieve a legitimate police power purpose. If a locality reasonably designed a use "to advance the general welfare rather than purely private interests, courts will not classify the regulation as indiscriminate spot zoning at odds with the essence of the delegated zoning authority under the police power."[63] Other cases invalidating spot zoning rely not so much on the lack of connection to a police power purpose as on the violation of a comprehensive plan, which most states require by statute.[64]

It has been said that a comprehensive plan is not a prerequisite to valid zoning unless legislation so provides.[65] But the zoning enabling

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MINN. L. REV. 1 (1977) (arguing that aesthetic values are not too subjective for courts to deal with and identifying the primary considerations important in an evaluation of aesthetic values); Jerry A. Brock, Note, *Zoning for Aesthetics — A Problem of Definition*, 32 U. CIN. L. REV. 367 (1963) (arguing that because beauty is subjective, courts should be conservative about whether aesthetic concerns can justify restricting an individual's land use); Frederick L. Decker, Note, *Aesthetic Considerations in Land Use Regulation*, 2 WILLIAMETTE L.J. 420 (1963) (evaluating the role of aesthetics in balancing rights and public interests). Some authority indicates that the majority view now is that aesthetic grounds alone *do* suffice to support the validity of a zoning law. *See* Samuel Bufford, *Beyond the Eye of the Beholder: A New Majority of Jurisdictions Authorize Aesthetic Regulation*, 48 U.M.K.C. L. REV. 125 (1980); *see also* Edward H. Ziegler, Jr., *Aesthetics in Ohio Land Use Law: Preserving Beauty in the Parlor and Keeping Pigs in the Barnyard*, 19 AKRON L. REV. 1 (1985) (noting that the trend in modern cases is to uphold aesthetic-based zoning).

62. *See* James S. Holden Co. v. Conner, 241 N.W. 915, 916 (Mich. 1932) (Clark, C.J., dissenting) (noting support for the idea that aesthetics may be an element of the public welfare); Romar Realty Co. v. Board of Comm'rs, 114 A. 248 (N.J. 1921) (invalidating an ordinance prohibiting the erection of a one-story building within 80 feet of the building line along a certain street because aesthetic considerations are matters of luxury and indulgence rather than necessity); City of Texarkana v. Mabry, 94 S.W.2d 871, 875 (Tex. Civ. App. 1936) (invalidating an ordinance which prohibited gas stations and stores in a particular district because the locality enacted it merely to satisfy the aesthetic desires of inhabitants of the small area affected).

63. Schmidt v. Board of Adjustment, 88 A.2d 607, 615 (N.J. 1952).

64. *See* David A. Yaffee & Herbert N. Cohen, Note, *Spot Zoning and Comprehensive Plan*, 10 SYRACUSE L. REV. 303 (1959). Statutes also often require uniformity within zoning districts. *See* Annotation, *Spot Zoning*, *supra* note 24, at 309-10.

65. *See* Cleaver v. Board of Adjustment, 200 A.2d 408, 413 (Pa. 1964) ("A planning commission and a comprehensive plan are often wise, but not necessary, unless the

acts of most states, that is, the statutes that authorize local governments to engage in zoning, do in fact require that the zoning be in accord with a comprehensive plan.[66] The adoption of a comprehensive plan is often surrounded with safeguards, such as a provision for public hearings and other procedural requirements.[67] The test for spot zoning is whether the locality enacted the particular provision of the zoning ordinance "with the purpose or effect of furthering a comprehensive scheme or . . . merely to relieve a lot . . . from the burden of a general regulation."[68]

Before enacting or amending zoning laws, legislators should consider not merely the specific use proposed to be made of a single piece of property, but all the uses permissible on all the properties in the district.[69] Further, they should consider the most appropriate uses of

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legislature or legislative body clearly otherwise requires."). Even when a statute specifically requires a "comprehensive plan" or ordinance, this does not necessarily mean a tangible, written document, often called a "master plan," setting forth the community's goals and expectations; the zoning ordinances themselves may reveal sufficient orderliness to meet the "comprehensive plan" requirement. *See* Kozesnik v. Township of Montgomery, 131 A.2d 1, 7 (N.J. 1957); Toole v. May-Day Realty Corp., 223 A.2d 545, 548-49 (R.I. 1966); *cf.* Couch v. Zoning Comm'n, 106 A.2d 173, 176 (Conn. 1954) (noting that if a locality has no master plan, a comprehensive plan may be found in the zoning regulations themselves); Udell v. Haas, 235 N.E.2d 897, 900 (N.Y. 1968) (holding that in drafting specific zoning laws, localities must consider the needs of the community as an entirety). *See generally* Charles M. Haar, *"In Accordance with a Comprehensive Plan,"* 68 HARV. L. REV. 1154 (1955) [hereinafter Haar, *Comprehensive Plan*] (suggesting that courts adopt a comprehensive plan as a separate prerequisite to validity of zoning laws and not use it merely as a part of the requirement of "reasonableness"; and arguing that ideally, the comprehensive plan should be evidenced by an actual master plan). On master plans, see generally Allison Dunham, *City Planning: An Analysis of the Content of the Master Plan*, 1 J. LAW & ECON. 170 (1958); Charles M. Haar, *The Master Plan: An Impermanent Constitution*, 20 LAW & CONTEMP. PROB. 353 (1955).

66. *See* Haar, *Comprehensive Plan, supra* note 65, at 1157; REYNOLDS, *supra* note 31, at 365-66 (citing cases involving comprehensive plan statutes and noting that "[C]onformity to such plans is thought to ensure that zoning classifications will . . . be free from arbitrariness or unreasonable discrimination"); *cf.* Chapman v. City of Troy, 4 So.2d 1 (Ala. 1941) (statutes called for dividing municipality into appropriate districts according to comprehensive plan).

67. *See* Chrobuck v. Snohomish County, 480 P.2d 489, 495 (Wash. 1971). Such requirements particularly apply if and when the "comprehensive planning" is put into the form of a written "master plan." *See* REYNOLDS, *supra* note 31, at 478-79.

68. Palisades Properties, Inc. v. Brunetti, 207 A.2d 522, 533 (N.J. 1965).

69. *See* Perkins v. Marion County, 448 P.2d 374 (Or. 1968) (invalidating the rezoning of a suburban area to permit heavy industrial use because the county commissioners did not give adequate consideration to all the possible uses of the rezoned land).

property throughout the community and should create districts and restrictions that encourage those appropriate uses.[70] Legislators should always have orderly planning as a legislative goal.[71]

With the comprehensive plan requirement in mind, a court may decide that when the locality's plan shows an intent to maintain a particular area as residential and to limit traffic therein, an ordinance allowing a shopping center on one block within the area is invalid as spot zoning.[72] When there is doubt as to whether or not a change fits with the comprehensive plan, courts tend to defer to local authorities, because zoning and planning are local concerns.[73] Courts base their deference on the premise that local authorities are best situated to study the conditions in their own community and to adjust zoning patterns to changing conditions.[74] Thus, a strong presumption of validity attaches to zoning laws even if challenged as not in accord with comprehensive planning.[75]

Statutory requirements of comprehensiveness and uniformity allow local legislative bodies considerable discretion in determining whether substantial differences between properties justify different treatment of

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70. Godfrey v. Union County Bd. of Comm'rs, 300 S.E.2d 273, 275 (N.C. 1983) (finding rezoning of residential parcel to allow heavy industry invalid because it did not "promote the most appropriate use of land throughout the community").

71. *See* Kuehne v. Town Council, 72 A.2d 474, 478 (Conn. 1950).

72. *See* Borough of Cresskill v. Borough of Dumont, 104 A.2d 441, 447-48 (N.J. 1954) (finding a proposed change in effect a variance and therefore invalid as spot zoning).

73. Luery v. Zoning Bd., 187 A.2d 247, 252 (Conn. 1962) ("In the final analysis, zoning is primarily a matter of local concern."). But this statement cannot be taken too broadly. In the area of "home rule", where matters must often be classified by statewide concern or local concern in order to determine whether state or local law prevails in cases of conflict, zoning is often categorized as a statewide concern. *See* EUGENE MCQUILLIN, THE LAW OF MUNICIPAL CORPORATIONS § 4.112a (3d ed. 1966); REYNOLDS, *supra* note 31, at 109-10; *see generally* David R. McEwen, Comment, *Land-Use Controls, Externalities, and the Municipal Affairs Doctrine: A Border Conflict*, 8 LOY. L.A. L. REV. 432 (1975).

74. *Cf.* Thomas v. Town of Bedford, 184 N.E.2d 285, 287-88 (N.Y. 1962) (allowing rezoning of land where town planners realized increasing urbanization of town was inevitable).

75. *See* Goodrich v. Town of Southampton, 370 N.Y.S.2d 15 (N.Y. App. Div. 1975) (holding that while the challenged change was not strictly in accord with master plan, the challengers failed to overcome the presumption of validity), *aff'd*, 355 N.E.2d 297 (N.Y. 1976).

those properties.[76] "Comprehensive planning" envisions reasonable uniformity within districts having the same basic characteristics and does not ordinarily contemplate, for instance, setting up one or two lots within a district as a separate zone.[77] Local authorities are often in the best position to judge whether particular uses will fit the traffic and aesthetic patterns of the community.[78] When zoning demonstrates the antithesis of comprehensive planning, however, as in attempting to establish each block as an independent district, courts should invalidate the law as spot zoning.[79]

Indeed, the fact that a particular zoning law or amendment applies only to a small area sometimes indicates a violation of comprehensive planning which amounts to spot zoning.[80] Rezoning within a residential area of "a small corner about big enough for three houses," in order to allow a gasoline station, may demonstrate nonconformity with any overall plan of development, rendering it void as spot zoning.[81] Conversely, a court will more likely uphold against spot zoning allegations a change in zoning of a tract of 20 acres.[82] The size of the

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76. *See generally* Lavitt v. Pierre, 203 A.2d 289, 293 (Conn. 1964) (describing the range of functions possible for a zoning commission).

77. Smith v. Board of Appeals, 48 N.E.2d 620, 621 (Mass. 1943) (holding such a designation a "plain case" of spot zoning).

78. *See* Daro Realty, Inc. v. District of Columbia Zoning Comm'n, 581 A.2d 295, 300 (D.C. 1990) (holding consistent with the comprehensive plan rezoning to permit an apartment building because it was compatible with, and an aesthetic asset to, the area and would only minimally increase traffic and parking).

79. City of Olean v. Conkling, 283 N.Y.S. 66, 71 (N.Y. Sup. Ct. 1935) (holding invalid as not part of a well-considered plan an attempt to establish each block as a separate district, designating each block as residential or otherwise according to whether or not it contained more than ten dwellings).

80. *See* Viso v. State, 154 Cal. Rptr. 580, 584-85 (Cal. Ct. App. 1979) (noting that spot zoning usually involves a small parcel of land); Guerriero v. Galasso, 136 A.2d 497, 501 (Conn. 1957) (holding that spot zoning requires a change of zone that is applicable only to a small area and that is out of harmony with a comprehensive plan).

81. *See* Santmyers v. Town of Oyster Bay, 169 N.Y.S.2d 959, 961 (N.Y. Sup. Ct. 1957).

82. *See id.* at 961. In Sunnybrook, Inc. v. Upper Dublin Township, 75 Pa. D. & C. 385 (1950), a variance was sought for a 20-acre tract, and the court took the position that if the relief sought could not be obtained by legislation because it would be spot zoning, then an application for a variance was appropriate, but if legislation would not be spot zoning, then the remedy should lie with the legislative body. The court then ruled that a zoning ordinance applicable to 20 acres of land could not be successfully attacked as spot zoning. On variances as possible examples of spot zoning, see note 20 *supra* and

property is a critical consideration to claims of incongruity.[83] However, the majority view holds that the small size of the tract involved is not the controlling factor.[84] The court must also consider the topography, location, and other characteristics of the tract, and its relationship with surrounding land.[85] Thus, harmony with the comprehensive plan is the real test, and size of the tract is merely one factor for courts to weigh in determining whether harmony exists.[86] Even if a zoning board creates a small island of differing zoning in the midst of an otherwise uniform zone, a court may uphold it if reasonable grounds exist for the differentiation based on topography, traffic, and precise location in relation to the intersections.[87] In such a case, the court may find the differing zoning to promote orderly growth in accordance with the comprehensive plan.[88] Because no precise definition of such a subjective term as "small area" exists, size cannot possibly be more than one factor to weigh in determining conformity with a comprehensive plan.

In addition to arguments that the zoning does not reasonably relate to police power objectives or does not conform to a comprehensive plan, many spot zoning cases involve perceived discrimination. Even when an

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accompanying text. *See generally* Erwin S. Barbre, Annotation, *Requirement that Zoning Variances or Exceptions Be Made in Accordance with Comprehensive Plan*, 40 A.L.R.3d 372 (1971).

83. *See In re* Appeal of Lieb, 116 A.2d 860, 866-67 (Pa. Super. Ct. 1955) (holding that the size of a tract is not the only consideration but is a very important one, and holding that a tract 800 feet by 200 feet at one end, and 300 feet at the other end, is not the type of lot referred to in the spot zoning cases).

84. *See, e.g.*, Pollock v. Zoning Bd. of Adjustment, 342 A.2d 815, 819 (Pa. Commw. Ct. 1975) (holding no formula exists to determine if spot zoning is present and that the small size of the tract is not controlling); Trinity Evangelical Lutheran Church v. City Council, 278 A.2d 372, 373 (Pa. Commw. Ct. 1971) ("[T]he size of the 'spot' is not controlling.").

85. *See* Cleaver v. Board of Adjustment, 200 A.2d 408, 415 (Pa. 1964) (holding that tract in question, although sufficiently "small," was surrounded by land with similar characteristics and therefore spot zoning was not present).

86. *See* Fifteen Fifty North State Bldg. Corp. v. City of Chicago, 155 N.E. 2d 97, 102 (Ill. 1959) (holding that reclassification of a small parcel of land was not spot zoning when it was part of a larger comprehensive plan).

87. *See* Hamer v. Town of Ross, 382 P.2d 375, 380 (Cal. 1963).

88. *See* Cassel v. Mayor of Baltimore, 73 A.2d 486, 489 (Md. 1950) (holding a use permitted in a small area, even if different from the use to which surrounding area is restricted, is not spot zoning if it does not conflict with comprehensive plan and is in harmony with orderly growth).

area is not subject to spot zoning, a court may apply other general principles of zoning law. An area may not be singled out for more onerous treatment than is accorded surrounding land unless good reason exists for the distinction.[89]

Courts may invalidate different treatment of similarly situated properties, such as the various corners of an intersection, as an abuse of the police power.[90] Courts often refer to such zoning as invalid spot zoning, because the zoning creates a use "unjustifiably different from [uses on] similar surrounding land."[91] Spot zoning creates an "island" of land that the law favors, or disfavors, even though the property may not be different from nearby properties in any relevant way.[92] The validity of the different treatment depends on whether the differently treated tracts do in fact display varying characteristics that justify the varying treatment,[93] as, for example, a tract separated from neighboring property by a major thoroughfare. The small size of a differently treated parcel is not determinative;[94] but the key question is the public need for

89. *See* Leahy v. Inspector of Buildings, 31 N.E.2d 436, 439 (Mass. 1941) (holding city's amendment which singled out one lot for less onerous treatment than surrounding properties invalid as it was outside the city's power without mentioning spot zoning).

90. *See* City of The Village v. McCown, 446 P.2d 380, 383 (Okla. 1968) (finding a city's refusal to rezone one corner of intersection to allow a service station where other corners were zoned for commercial use an abuse of the police power).

91. Schubach v. Silver, 336 A.2d 328, 336 (Pa. 1975) ("Possibly the most important factor in spot zoning cases is whether the rezoned land is being treated unjustifiably different from similar surrounding land.").

92. *See In re* Appeal of Mulac, 210 A.2d 275, 277 (Pa. 1965) (stating that the most determinative factor of spot zoning is the unjustifiably different treatment of one parcel of land from surrounding land); *In re* Appeal of Lieb, 116 A.2d 860 (Pa. 1955) (invalidating beneficial treatment of a small area for no apparent reason except to favor the owner); *cf. In re* Appeal of McWilliams, 198 A.2d 538, 540 (Pa. 1964) (presuming the legality of a rezoned area that adjoined similarly zoned property).

93. *See, e.g.,* McWhorter v. City of Winnsboro, 525 S.W.2d 701, 704 (Tex. Civ. App. 1975) (holding that an amendment to a zoning ordinance did not constitute spot zoning but was an enlargement of an existing adjacent zone because no major thoroughfare separated rezoned land from adjacent area). *But cf.* Hunt v. City of San Antonio, 462 S.W.2d 536, 540 (Tex. 1971) (finding spot zoning in a rezoned area separated from a similarly zoned tract by a busy, four-lane thoroughfare).

94. Salvitti v. Zoning Bd. of Adjustment, 240 A.2d 534, 536 (Pa. 1968) (invalidating rezoning of 200-foot square area from residential to commercial as spot zoning); *see also supra* notes 85-93 and accompanying text (concluding that the small size of a parcel that is zoned differently from its neighbors is not determinative of whether such zoning is out-of-line with a comprehensive plan); *cf.* Viso v. State, 154 Cal. Rptr. 580 (Cal. Ct. App. 1979) (upholding zoning where it created a small island in the midst of less restrictive

the differing treatment.[95]

The argument against validity in these cases depends on the discrimination.[96] Courts apply the general legal rule that unjustified discrimination invalidates a law.[97] The courts will strike down preferential treatment, whether the preference given favors a single tract at the expense of the neighbors or favors many tracts at the expense of a more harshly treated area of isolation.[98] When the alleged "spot" is not an "island" but is connected to similarly zoned property, the claim of discrimination is weak and likely to be denied.[99] Thus, if rezoning of a small area occurs in order to allow a shopping center and if the rezoned area touches other areas already zoned for commercial use, courts will likely recognize a reasonable extension of the pre-existing zoning.[100] Similarly, courts rarely invalidate the "residential" zoning of lots as spot zoning even if the lots touch on other properties zoned for business purposes if the lots also abut areas zoned exclusively residential.[101] Courts will not invalidate zoning if the zoning, or rezoning, is a reasonable effort to draw the boundary lines that inevitably must be drawn in these matters or redraws a line to extend a classification to include a larger area.[102]

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zoning because rational grounds supported the classification). *But see* City of Pharr v. Tippitt, 616 S.W.2d 173, 177 (Tex. 1981) (noting that some authorities consider the size of a rezoned tract, in relation to affected neighboring lands, the most important consideration as to the zoning's validity).

95. *See* Bosse v. City of Portsmouth, 226 A.2d 99, 105-06 (N.H. 1967).

96. *See* Keppy v. Ehlers, 115 N.W.2d 198 (Iowa 1962) (holding reclassification of a tract from rural to light industrial discriminated against persons owning similar tracts and thus was illegal spot zoning).

97. *See* Page v. City of Portland, 165 P.2d 280, 286 (Or. 1946) (en banc) (requiring a reasonable basis for any discrimination).

98. *See* Thompson v. City of Palestine, 510 S.W.2d 579, 582 (Tex. 1974) (noting that spot zoning involves preferential treatment).

99. *See* Lockard v. City of Los Angeles, 202 P.2d 38, 44-45 (Cal. 1949) (en banc).

100. Putney v. Township of Abington, 108 A.2d 134 (Pa. Super. Ct. 1954).

101. *See* Williams v. Village of Schiller Park, 138 N.E.2d 500, 501 (Ill. 1956).

102. *See generally* State *ex rel.* Gutkowski v. Langhor, 502 P.2d 1144, 1146 (Mont. 1972) (approving the extension of a preexisting zone classification to include a larger area). *Accord* Arkenberg v. City of Topeka, 421 P.2d 213 (Kan. 1966); McNaughton v. Boeing, 414 P.2d 778, 780 (Wash. 1966).

Generally, property in like circumstances should be treated alike.[103] Nevertheless, dissimilar treatment of similar properties is not always invalid, provided it advances the community interest, rather than some private interest.[104] The determinative question is whether a reasonable justification exists for the differential zoning.[105] To justify dissimilar treatment, a locality must look to the condition or location of the land, not to any desire to treat the owner with special favor or disfavor.[106] Thus, the rule in cases of alleged unequal treatment is simply that differences in classification must be based on real differences that are reasonably related to the purposes of the law.[107] An irrational difference in treatment of similarly situated properties violates equal protection and courts will invalidate it.[108] Courts should always invalidate laws that arbitrarily discriminate, whether characterized as "spot zoning" or not.[109]

III. THE "SPOT ZONING" TERMINOLOGY IS NOT USEFUL

The term "spot zoning," creates confusion. Spot zoning may indicate a court's conclusion that particular zoning is invalid, while at other times courts use the term to describe zoning that may or may not

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103. Raskin v. Town of Morristown, 121 A.2d 378, 384 (N.J. 1956); Beirn v. Morris, 103 A.2d 361, 364 (N.J. 1954).

104. Kozesnik v. Township of Montgomery, 131 A.2d 1, 10 (N.J. 1957) ("[The Township] is entitled to encourage industry where it will best advance the community's interest.").

105. *See* Cleaver v. Board of Adjustment, 200 A.2d 408, 415 (Pa. 1964).

106. *In re* Appeal of Lieb, 116 A.2d 860, 866 (Pa. 1955).

107. *See, e.g.,* Woodland Estates, Inc. v. Building Inspector, 358 N.E.2d 468 (Mass. App. Ct. 1976) (holding that zoning of land as a hospital district did not amount to impermissible spot zoning because it was not an irrational treatment of similarly situated people that denied equal protection).

108. *Id.* at 471.

109. *See, e.g.,* Cassel v. Mayor of Baltimore, 73 A.2d 486 (Md. 1950) (holding that reclassifying a piece of property in a residential area as commercial in order to build a funeral home was discriminatory spot zoning); Weaver v. Ham, 232 S.W.2d 704 (Tex. 1950) (invalidating an ordinance rezoning one block, near center of a single-family residence district, as an apartment house district); De Blasiis v. Bartell, 18 A.2d 478 (Pa. Super. Ct. 1941); Huebner v. Philadelphia Sav. Fund Soc'y, 192 A. 139 (Pa. Super. Ct. 1937) (invalidating a zoning ordinance which created a separate commercial zone consisting of an isolated corner lot within a residential area); *see also* Annotation, *Spot Zoning, supra* note 24, at 286-89.

be invalid.[110] At best, "the term is not a [term] of art,"[111] but a description of a process of singling-out a particular piece of property for treatment that differs from that accorded neighboring properties. If and when courts declare such zoning invalid, they must base this declaration on one or more of the above-described grounds: lack of connection to a police power purpose, lack of conformity to a comprehensive plan, or unreasonable inequality in treatment of similarly situated lands. No single formula can determine the validity of zoning; the courts must decide each case according to its own peculiar facts.[112] After all, differential treatment of individual parcels of land may be at times a desirable means of providing flexibility in the law and of providing relief in situations of unusual hardship.[113]

The concept of spot zoning, and use of this terminology, are gradually losing favor in the law.[114] Certainly the practice continues, but it has long been true that many courts determine the validity of zoning or rezoning of particular lots, which differs from the zoning of the surrounding area, without using the term "spot zoning." Instead, a court may recognize that when land is rezoned so as to permit a shopping center, the real question is whether the rezoning promotes the public good.[115] A court determining the validity of a rezoning that would permit a large apartment complex need not mention spot zoning, but may look to whether the rezoning would lessen or increase street congestion, permit adequate light and air, or overcrowd the land. In other words, a court may simply ask if the zoning or rezoning would

110. Annotation, *Spot Zoning*, *supra* note 24, at 266; *see also supra* notes 18-29 and accompanying text.

111. Burkett v. City of Texarkana, 500 S.W.2d 242, 244 (Tex. Civ. App. 1973).

112. Pollock v. Zoning Bd. of Adjustment, 342 A.2d 815, 819 (Pa. Commw. 1975) (stating that courts must decide each case on its own peculiarities and that size, topography, location, and characteristics of the tract may be considered).

113. *See, e.g.*, George M. Platt, *Valid Spot Zoning: A Creative Tool for Flexibility in Land Use*, 48 OR. L. REV. 245 (1969) (suggesting the use of small-area rezonings to relieve hardships).

114. *See, e.g.*, ROBERT S. ELLICKSON & A. DAN TARLOCK, CASES & MATERIALS ON LAND-USE CONTROLS 243 (1981) (noting a decline in the number of cases discussing "spot zoning" and stating that this concept "in some states is now almost an anachronism").

115. *See, e.g.*, Bucholz v. City of Omaha, 120 N.W.2d 270, 275 (Neb. 1963) (stating that the municipal governing body has the discretion to determine the public good).

promote public safety, health, morality, and welfare.[116]

Similarly, in ruling on the legality of zoning that removes a single lot from a residential zone and classifies it as "commercial," a court need not discuss spot zoning but may base its decision on whether the zoning fits the locality's comprehensive plan.[117] The same is true when a change in the law allows multiple-family zoning in part of a formerly single-family zone.[118] Such changes are not necessarily invalid, and courts should not automatically condemn them merely because some might characterize them as spot zoning.[119]

If a zoning board allows in a district a particular use, such as a public garage, on some streets, but not on others, a land owner may attack the law and possibly have it invalidated on the ground that it violates principles of equal protection and uniformity.[120] The court will simply recognize that such unfair treatment constitutes an invasion of the property rights of the owner against whom the discrimination occurs.[121] It adds nothing to call this spot zoning.

Whenever a zoning law is beyond the power of the local legislative

116. *See, e.g.,* Davis v. City of Omaha, 45 N.W.2d 172, 174 (Neb. 1950) (invalidating a rezoning ordinance without mention of "spot zoning" because it did not promote goals such as lessening street congestion, securing safety from fire, providing adequate light and air, preventing overcrowding, and facilitating adequate provision of transportation, water, sewerage, schools, and parks).

117. *See, e.g.,* Conlon v. Board of Pub. Works, 94 A.2d 660, 663 (N.J. 1953) (invalidating an ordinance as amounting to unlawful taking of the board of adjustment's power to grant or recommend a variance).

118. Randolph v. Town of Brookhaven, 337 N.E.2d 763, 765 (N.Y. 1975) (finding sufficiently comprehensive planning because zoning change was consistent with existing zoning patterns that protected single-family residences from a highway with a barrier of commercial establishments).

119. The change may reflect comprehensive planning that attempts to shelter single-family residences from more congested areas. *Id.*

120. *See, e.g.,* Henry v. White, 250 S.W.2d 70 (Tenn. 1952).

121. *See, e.g.,* Evanns v. Gunn, 29 N.Y.S.2d 368, 369-70 (N.Y. Sup. Ct. 1940) (holding that an amendment removing property from a business zone, placing it in residence zone, and leaving premises across the way zoned for business, invaded the owner's property rights). As one court noted "When Tweedledee is granted, and Tweedledum is denied [relief], suspicion ripens into certainty that Tweedledum has been denied justice." Jurgens v. Town of Hunington, 384 N.Y.S.2d 870, 871 (N.Y. App. Div. 1976) (quoting Cowan v. Kern, 378 N.Y.S.2d 746, 749 (N.Y. App. Div. 1976)).

body, courts must invalidate it.[122] The public and the immediately involved landowners are entitled to know the specific grounds for the invalidation. Use of the term "spot zoning" only clouds the question, for the term covers a number of grounds and lacks precision. In order to serve the public welfare, the zoning law must reasonably relate to a police power purpose, must be enacted in furtherance of a comprehensive plan, and must be applied without unreasonable discrimination. These are the controlling tests of validity.[123] If the zoning does not meet one of these requirements, the court should set forth the requirement and note the ways in which the law fails to meet it. Only then can the local legislature possibly correct the deficiency, or at least avoid the pitfall in the future. Only then can the affected landowners know the scope of their protection against government restriction. "Spot zoning" as a legal term adds nothing to the analysis and courts should remove the black spot from the law.

122. *See, e.g.*, Eves v. Zoning Bd. of Adjustment of Lower Gwynedo Township, 164 A.2d 7, 12 (Pa. 1960) (invalidating a zoning ordinance for giving township supervisors duties beyond those outlined in the enabling legislation).

123. *See, e.g.*, Zandri v. Zoning Commission, 192 A.2d 876, 878 (Conn. 1963) (upholding an amendment creating garden apartment zone as a fair exercise of legislative discretion).

NOTES